IN THE

Supreme Court of the United States

October Term, 1947
No. 714.

OSCAR SCHATTE, *et al.*,

Petitioners,

vs.

INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES AND MOVING PICTURE OPERATORS OF THE UNITED STATES AND CANADA, *et al.*,

Respondents.

Brief of Respondents Association of Motion Picture Producers, Inc., Loew's Incorporated, Paramount Pictures Inc., Warner Bros. Pictures, Inc., Columbia Pictures Corporation, Samuel Goldwyn Productions, Inc., Republic Productions, Inc., Hal E. Roach Studio, Inc., Technicolor Motion Picture Corporation, Twentieth Century Fox Film Corporation, R.K.O. Radio Pictures, Inc., and Universal Pictures Company, Inc., in Opposition to Petition for Writ of Certiorari.

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Parker & Company, Law Printers, Los Angeles. Phone TR. 5206.

SUBJECT INDEX

TABLE OF AUTHORITIES CITED

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Statement of the Case.

This is an action for declaratory relief with respect to the interpretation of collective bargaining agreements alleged to have been made between respondent Motion Picture Companies, respondent IATSE, and Local 946 of

the Carpenters Union. In their complaint, petitioners allege that they are members of the Carpenters Union; that the collective bargaining agreements require the Companies to assign the work of "erection of sets on stages" to members of the IATSE and other "carpenter work" to members of the Carpenters Union; that the Companies interpreted the words "erection of sets on stages" as meaning "construction of sets on stages," whereas, according to plaintiffs, the correct interpretation was "assemblage of sets on stages"; that the Companies have assigned set construction to members of the IATSE, a rival A. F. of L. Union, in violation of these agreements. [R. 3-22.]

The District Court correctly described the action as one "in which private individuals asked this Court to construe their rights under a contract negotiated on their behalf by a labor union, and to protect such rights from interference with or invasion by other persons acting individually or in conspiracy with each other." [R. 122-123.]

The action was commenced (January 3, 1947) and dismissed for want of jurisdiction (February 25, 1947) before the enactment of the Labor-Management Relations Act of 1947 (June 23, 1947; 29 U. S. C. A. 141). The question is whether the Circuit Court of Appeals erred in affirming the judgment of the District Court holding that in the absence of an allegation of diversity of citizenship, it had no jurisdiction over an action brought by individual members of the Union for the purpose of interpreting collective bargaining agreements.

I.

Answer to Petitioners' Point I: Jurisdiction of the District Court Cannot Be Predicated Upon the Claim That This Case Arises Under the Fifth Amendment.

Plaintiffs contend that they have been deprived of property without due process of law because the defendant Motion Picture Companies hired members of the IATSE rather than members of the Carpenters Union to erect sets on stages. Even if defendant Motion Picture Companies were wrong in construing their collective bargaining contracts with the IATSE and the Carpenters Union as requiring the Companies to employ members of the IATSE to erect sets on stages, still, such action on their part would not have constituted a violation of the Fifth Amendment.

The Fifth Amendment prohibits acts of the federal government, not individual action.[1] If petitioner's theory were to be accepted, every violation of an employment contract would be a violation of the Fifth Amendment, and the District Courts would have jurisdiction over all controversies arising out of the breach of such contracts. The application of the same principle would make every breach of a contract involving property a violation of the Fifth Amendment and would bring all such controversies within the jurisdiction of the District Courts.

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[1]*Corrigan v. Buckley*, 271 U. S. 323, 330; *Talton v. Mayes*, 163 U. S. 376, 382.

No allegation is made that the Companies based their construction of the contracts upon any federal statute. The Companies are not alleged to have acted under color of any federal statute. As private parties, the Companies acted in accordance with their interpretation of private contracts. Petitioner's contention that the complaint states a claim for violation of the Fifth Amendment is without merit.

II.

Answer to Petitioners' Point II: Jurisdiction of the District Court Cannot Be Predicated Upon the Claim That This Case Arises Under the National Labor Relations Act.

The complaint does not set forth any facts even purporting to show a violation of any of the provisions of the National Labor Relations Act. Petitioners claim that defendant Motion Picture Companies have violated their collective bargaining agreements with the Carpenters Union. Violation of collective bargaining agreements is not prohibited by the National Labor Relations Act. The Act does not even require that employers or unions enter into collective bargaining contracts, much less that they perform them when made.[2] Even if the acts of the Motion Picture Companies which are claimed to be violative of the collective bargaining agreements were also violative of rights of the Petitioners which were protected by the National Labor Relations Act, still, the District Court would not have had jurisdiction to declare that the Act

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[2]*N. L. R. B. v. Jones & Laughlin Steel Corp.*, 301 U. S. 1, 45; *Lund v. Woodenware Workers Union* (D. C. Minn.), 19 F. Supp. 607, 609.

had been violated. Under Section 10(a) of the Act as it existed at the time this action was dismissed by the District Court, the National Labor Relations Board had exclusive jurisdiction over unfair labor practices.[3] The District Court was without jurisdiction.[4]

The fact that the collective bargaining agreements which petitioners seek to have construed were executed as a result of negotiations required by the National Labor Relations Act does not make this a case arising under said Act.[5] The Railway Labor Act,[6] in much the same language as is used in the National Labor Relations Act, requires collective bargaining, but the courts hold that actions to construe contracts made pursuant to such requirements are not within the jurisdiction of the District Court.[7]

Jurisdiction to determine whether the National Labor Relations Act has been violated lies not with the District Court, but with the National Labor Relations Board, subject to the right of the Circuit Courts of Appeals to review the Board's orders.

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[3]29 U. S. C. A. 160.

[4]*Myers v. Bethlehem Corporation*, 303 U. S. 41, 48; *Lund v. Woodenware Workers Union* (D. C. Minn.), 19 Fed. Supp. 607, 610.

[5]*Lund v. Woodenware Workers Union* (D. C. Minn.), 19 Fed. Supp. 607, 609; *Blankenship v. Kurfman* (C. C. A. 7, 1938), 96 F. (2d) 450; *Amalgamated Meat Cutters v. Spreckels* (C. C. A. 9, 1941), 119 F. (2d) 64, 65.

[6]45 U. S. C. A. 152.

[7]*Malone v. Gardner* (C. C. A. 4), 62 F. (2d) 15; *Delaware L. & W. R. Co. v. Slocum* (D. C.. N. Y,), 56 Fed. Supp. 634, 636.

III.

Answer to Petitioners' Point III: Jurisdiction of the District Court Cannot Be Predicated Upon the Claim That This Case Arises Under Judicial Code Section 24.

Judicial Code Section 24 consists of 28 subdivisions, each of which describes a type or types of cases over which the District Courts have jurisdiction. In arguing Point III, Petitioners fail to specify which subdivision is claimed to embrace this case. Petitioners simply describe an Arbitration Award which they seek to have the District Court construe. In the absence of an allegation of diversity of citizenship, we are unable to find any provision of Judicial Code Section 24 which could possibly constitute a basis for District Court jurisdiction to construe an Arbitration Award which private parties have agreed to abide by.

IV.

Answer to Petitioners' Point IV: Jurisdiction of the District Court Cannot Be Predicated Upon the Claim That This Case Arises Under the Labor Management Relations Act of 1947.

Petitioners contend that jurisdiction is conferred by Section 301(a) of the Labor-Management Relations Act of 1947. The District Court dismissed this action before said section was enacted. Said section provides that certain actions *"may be brought* in any District Court of the United States having jurisdiction of the parties." Said section, therefore, operates *in futuro,* and not retroactively. It applies only to actions brought after June 23, 1947, when the Labor-Management Relations Act was enacted. Other statutes using the words *"may be brought"* have been held to operate *in futuro* and not retroactively.[8] Statutes conferring jurisdiction are not effective as to actions which have been dismissed by the trial court, even though the statute is enacted during the pendency of an appeal.[9]

Even though Section 301(a) of the Labor-Management Relations Act were held to breathe life into actions which had already been dismissed by the trial court for want of jurisdiction, still, said section would not have conferred jurisdiction upon the District Court in this action. Said section, properly construed, confers jurisdiction upon federal courts only in actions between a labor organization

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[8]*Newell v. Baltimore & Ohio R. Co.*, 181 Fed. 698, 700-701; *Ft. Smith & W. R. Co. v. Blevins* (Okla., 1913), 130 Pac. 625; *Baines v. Jamison* (Texas, 1893), 23 S. W. 639; *Texas Railway Co. v. Edmisson* (Texas, 1899), 52 S. W. 635; *Austin v. Parsons* (Texas, 1928), 3 S. W. (2d) 555.

[9]*Grant v. Greene Cons. Copper Co.* (App. Div.), 154 N. Y. S. 596, 600, aff'd 119 N. E. 1046.

and an employer. This action is not one between a labor organization and an employer. In this action, the eleven plaintiffs are alleged to be members of a labor organization, but there is no allegation that said members are or ever have been employees of respondent Motion Picture Companies. Thus, the action is not one between a labor organization and an employer, but is one between respondent Motion Picture Companies and members of the Carpenters Union who, so far as the allegations show, were never employed by any of respondent Motion Picture Companies.

The Congressional Committee Reports and Reports of Senate and House Conferees make it clear that the jurisdiction which Congress intended to confer upon District Courts was not jurisdiction over actions between individuals and persons or companies that might employ employees, but rather that jurisdiction should be conferred upon District Courts in actions between labor organizations and employers with respect to contracts between such labor organizations and such employers. They refer to Section 301(a) as conferring jurisdiction over "suits by unions as legal entities and against unions as legal entities;" suits "between a labor organization and an employer;" "suits by and against labor organizations."[10] It is plain that Congress never intended to make the District Courts a forum in which *individual* employees and employers could sue each other for violation of collective bargaining contracts, regardless of the amount involved or the lack of diversity of citizenship.

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[10]Report No. 105 of Senate Committee on Labor and Public Welfare, dated April 17, 1947; Report of Senate Conferees, dated June 5, 1947, Congressional Record, page 6602; Report of House Conferees, dated June 3, 1947, Congressional Record, pages 64-70.

V.

Answer to Petitioners' Point V: The Federal Declaratory Judgment Act Is Applicable Only to Cases Within the Jurisdiction of the Federal Court; It Does Not Confer Jurisdiction Where None Otherwise Exists.

The Federal Declaratory Judgment Act does not enable petitioners to bring this action in the District Court when jurisdiction does not otherwise exist. The Federal Declaratory Judgment Act is a procedural statute, applicable to cases within the jurisdiction of the federal courts, and not a statute conferring jurisdiction.[11]

Conclusion.

Respondent Motion Picture Companies pray that the Petition for Writ of Certiorari be dismissed.

Respectfully submitted,

HOMER I. MITCHELL,
Attorney for said Respondents.

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[11] *Aetna Casualty & Surety Co. v. Quarles* (C. C. A. 4), 92 F. (2d) 321, 323; *Mississippi Power & Light Co. v. City of Jackson* (C. C. A. 5), 116 F. (2d) 924; *Samuel Goldwyn, Inc. v. United Artists Corporation* (C. C. A. 3), 113 F. (2d) 703, 708; *McCarty v. Hollis* (C. C. A. 10), 120 F. (2d) 540, 542; *Homes Ins. Co. v. Trotter* (C. C. A. 8), 130 F. (2d) 800.